vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.15 OF 2007
IN
WRIT PETITION NO.2347 OF 2006

Sweet Confectionary ... Appellant

V/s.

S.M. Khot & Ors. ... Respondents

a/w
CIVIL APPLICATION NO.19 OF 2007
IN
LETTERS PATENT APPEAL NO.15 OF 2007
IN
WRIT PETITION NO.2347 OF 2006

Sweet Confectionary ... Appellant

V/s.

S.M. Khot & Ors. ... Respondents

Mr.C.U. Singh with Mr.M.S. Topkar for Appellant
Mrs.Anjali Helekar for Respondents

CORAM: **S.B. MHASE &**
SMT.NISHITA MHATRE, JJ.

DATED: **FEBRUARY 20, 2007**

P.C.:

. Heard Mr.Singh for the Appellant. This Letters Patent Appeal is directed against an order dated 20.11.2006 passed by a learned Single Judge of this Court. By the said order, Writ Petition No.2347 of 2006 was admitted. However, interim relief was not granted. The main grievance of the learned Counsel is that the Appellant is a small unit and while terminating the

services of the complainants in Complaint (ULP) No.488 of 1992, all the legal formalities for the purpose of retrenchment have been followed and the workmen or the respondent complainants have made out a false case that there was an oral termination and later on the notice and retrenchment compensation has been sent through post.

2. The facts disclose that the Complaint (ULP) No.488 of 1992 was filed by the respondents making a grievance that the termination of their services by the employer appellant is contrary to the provisions of law and thus, they have indulged into an unfair labour practice as provided under the MRTU & PULP Act. That complaint was however, allowed with reinstatement and backwages. As against that, Revision Application (ULP) No.87 of 1998 was preferred before the Industrial Court. The Industrial Court after having heard both the parties has dismissed the Revision Application. Thereafter, the matter was heard by the learned Single Judge of this Court and the impugned order was passed. What we have noted is that the Labour Court has observed and appreciated the evidence rightly that there was an oral termination without any compliance of section 25F of the Industrial Disputes Act and, therefore, the Complaint was allowed. The said finding has been accepted by the

Industrial Court and the Revision was rejected. By entertaining the Writ Petition, the learned Single Judge refused to grant interim relief because it appears that the Single Judge was equally impressed with the same finding even though the reasons are not reflected in the order. What is important to be noted is that in this case, the employer has not entered into the witness box to lead and rebut the evidence to the statement that there was an oral termination without compliance of section 25F. In fact, in the backdrop of the evidence of the complainant it was obligatory for the employer to enter into the witness box and to state in what circumstances the notice under section 25F and the compensation to be offered under the said section has has been sent by registered post A.D. to the complainants. What we prima facie find is that initially there was an oral termination and breach of section 25F. However, to circumvent the said illegality subsequently notices and the compensation have been sent by Registered Post A.D. It is prima facie an afterthought attempt on the part of the employer and therefore, though the issue may require scrutiny, prima facie, it appears that this is not a case for grant of interim relief. We cannot forget that when a person who is a bread earner of his family is thrown out of the employment on the road like this, not only the employee

personally suffers but equally the whole family is put to troublesome situation. Therefore, while taking an action of termination, a meticulous compliance of the provisions of law is a must on the part of the employer. Taking into consideration the balance of convenience and irreparable loss, we find that the balance of convenience in the present matter lies in favour of the employee-respondent. Thus, what we find is that this is not a case wherein we shall entertain the Letters Patent Appeal as against rejection of an interim order by the learned Single Judge.

3. At the end, the learned Counsel for the appellant has submitted that at least a stay to the backwages be given. We are not in favour of staying the said order taking into consideration the present price hikes, inflation and the difficulties in the life. If we stay the order, it will lead to starvation of the employee and not only that but it will be an unlawful act against the employee. We cannot forget that the complaint is of unfair labour practice and granting a stay in such a matter would equally lead to encouraging the employer to indulge into such practices and we may indirectly be a party to such an unfair labour practice. Therefore, the said submission is rejected. So far as expediting the matter is concerned, it is for the

learned Single Judge to consider it. The Appellant may approach the learned Single Judge with a request to expedite the matter. It will be very difficult for this Court to schedule the hearings of the Single Judge. We find that there is no merit in the matter. It is hereby rejected.

4. In view of the disposal of the Letters Patent Appeal, Civil Application does not survive and the same is disposed off accordingly.

(NISHITA MHATRE, J.) (S.B. MHASE, J.)